IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 1.12.2006

United India Insurance Company Ltd.

...Appellant

versus

Anil Kumar and others

... Respondents

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.
Hon'ble Mr.Justice Mahesh Grover.

Present: Mr.Vinod Chaudhri, Advocate
for the appellant.

UMA NATH SINGH, J. (ORAL)

This FAO arises out of an award dated 25.7.2006 passed by learned Presiding Officer, Motor Accident Claims Tribunal, Jhajjar, in MACT Petition No.45 of 2004, awarding a sum of Rs.84,000/- with 6% interest per annum in an injury case.

In this insurer's appeal, learned counsel submitted that the driver of the offending vehicle was holding driving licence for driving scooter, motorcycle, car and jeep, whereas while driving a three wheeler, the accident has occurred. Learned counsel also submitted that though before the accident and soon thereafter, the driver was found to have a valid driving licence but on the date of accident, the said licence was not renewed. Learned counsel referred to a latest judgment of Hon'ble the Apex Court reported in 2006 ACJ 1336 (National Insurance Co. Ltd. versus Kusum Rai and others), and also a judgment of a learned Single Judge of

Madras High Court reported in 2002 ACJ 1304 (Branch Manager, National Insurance Co.Ltd. versus R.Lakshmanan and another), in support of his contentions.

We have carefully examined both the judgments and with great respect, we say that both the judgments have been rendered in different premises. Looking to the facts and circumstances of the instant case, we are of the opinion that rather a three Judge Bench judgment of Hon'ble the Apex Court reported in 2004(1) ACJ 1 (National Insurance Co. Ltd. versus Swaran Singh and others), would apply in the case. In para 82 of the judgment, the Hon'ble Court has held that where holder of driving licence of one type of vehicle was driving another type of vehicle, in each case a decision has to be taken on the evidence led before the Tribunal. That apart, the Tribunal and the Court should also examine as to whether holding of different type of licence was the main or contributory cause of accident. We have also examined the award carefully and we do not find any such evidence led by the Insurance Company.

Thus, in terms of ratio of the judgment rendered in Swaran Singh's case (supra), we are not inclined to accept the appeal. Hence, it is dismissed in limine.

(UMA NATH SINGH)
JUDGE

December 1, 2006 **(MAHESH GROVER)**
pk **JUDGE**